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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/705,307
Filing Date: November 10, 2003
Appellant(s): MCINTYRE, LYNNE

**MAILED
JAN 28 2008
GROUP 3700**

John G. Posa
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 09/28/2007 appealing from the Office action mailed 05/02/2007.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

485,612	Cozens	11/1892
4,531,645	Tisbo et al.	7-1985
4,890,705	Pineda	1-1990

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5,803,470	Smith	9-1998
6,000,509	Chisholm	12-1999
6,334,519	Tong	1-2002
6,715,594	Milionta et al.	4-2004
4,825,584	Raley	5-1989

(9) Grounds of Rejection

It is noted that in the Final Rejection dated 05/02/07, in paragraph 3-5, the examiner inadvertently referred the rejection back to the Cozens combination in paragraph 1. The Cozens combination should be referred to paragraph 2 as it appears obvious that paragraph 1 is not a rejection, and the Cozens rejection only appears in paragraph 2.

The following ground(s) of rejection are applicable to the appealed claims:

1. Claims 1, 3, 13, and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cozens (485612) in view of anyone of Chisholm (6000509) or Smith (5803470), and further in view of Tisbo et al. (4531645). Cozens teaches a trunk with a body portion having an interior with a depth and opposing inner sidewalls, shelves “a” (note the plurality of tracks b accommodating shelves a), a closable door hinged to the body portion having an interior with a back wall defining a door depth (note the door has some depth shown in Fig. 2 wherein the tow side latches are attached and notice the depth to accommodate the casters m on the lid), and a plurality of pockets d, k, m. Cozens does not teach: a) the lower tracks along with drawer, and b) the modular with fasteners on the back connectable to the front surface.

Cozens also teach pocket “d” on the door, but does not show the plurality of fasteners disposed on the pockets. Smith ‘470 teaches that it is known in the art to provide a plurality of

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pockets 54 (see Fig. 5) with hook and pile fasteners (col. 4, ln. 63). It would have been obvious to one of ordinary skill in the art to provide the pockets with fasteners as taught by Smith to enable one to provide an alternative holding device and to store additional contents.

In the alternative to Smith, Chisholm also teaches that it is known in the art to provide pockets (Fig. 5, see pockets 61, 62). It would have been obvious to one of ordinary skill in the art to provide the pockets with fasteners as taught by Chisholm to enable one to provide an alternative holding device and to store additional contents.

With respect to the shelf with lower tracks and a drawer, Tisbo teaches that it is known in the art to provide a shelf 192 with tracks 204 to accommodate drawers 206,

Tray 192 includes a plurality of elongated containers 206 which have support lips 208 formed on opposed sides for mounting on ledges 202, **thus tray 192 may carry several containers 206, for holding a variety of items.** (col. 5, ln. 4-8)

Therefore, it would have been obvious to one of ordinary skill in the art to provide a shelf with lower tracks and drawers in Cozens, as taught by Tisbo, to enable one to accommodate for storing additional contents. Furthermore, one of ordinary skill in the art would find that it would have been obvious to one of ordinary skill in the art to provide the lower track on the shelves "a" of Cozens to provide an alternative means to store additional contents.

Regarding claim 3, note the plurality of pouches in the modular inserts in Chisholm and Smith.

2. Claims 15, and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cozens (485612) in view of either of Chisholm (6000509) or Smith (5803470), and further in view of Tisbo et al. (4531645) as set forth in paragraph 1, and further in view of Pineda (4890705). It is

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noted that Cozens teaches a transportable trunk with wheels at "m". The Cozens combination meets all claimed limitations except for the retractable handle. Pineda teaches that it is known in the art to provide a transport system with wheels 62 and retractable handle 70+72,72 (abstract, col. 1, ln. 49-50; col. 2, ln. 10-11; col. 3, ln. 13-14). It would have been obvious to one of ordinary skill in the art to provide a retractable handle along with wheels in Cozens as taught by Pineda to provide an alternative means for transport the case and to allow one to transport the case easily.

Regarding the independent claim 16, the claim is similar to that of independent claim 1 other than the integrated wheels and retractable with has been address above in this paragraph with Pineda. Furthermore, the Cozens teaches the two vertical tracks "b".

With respect to the modular inserts, it is noted each Cozens teaches a plurality of insert pockets d, k and l connectable to the case with fasteners being the straps j, h, g (pg. 1, ln. 45). Chisholm or Smith also teaches that it is known in the art to provide a plurality of pockets with hook and pile fasteners as set forth above in the combination in paragraph 1.

With respect to the insert, claim 16 recites

"including one or more of the following:

a personal wardrobe insert providing a plurality of pouches,
an open box structure with one or more elastic straps or hooks
for hanging, and
a pegboard adapted to carry tools or utensils."

The recitation "one or more" requires the teaching references to show only one of the listed groups. In this case, the Cozens teaches the insert provide a plurality of pouches k, l, d connectable to the door portion. Similarly, Smith teaches a personal wardrobe insert providing a plurality of pouches 54 in Fig. 6, and Chisholm teaches an insert with a plurality of pouches 72

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in Fig. 6. The device in Fig. 6 can also be the open box structure with straps for hanging as shown in Fig. 6.

3. Claims 12, and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over the Cozens combinations as set forth in paragraphs 1 and 2, and further in view of Raley (4825584). The Cozens combinations as set forth in paragraphs 1 and 2 meets all claimed limitations except for the bag that can be rolled and fitted onto the shelves. Raley teaches that it is known in the art to provide a bag that can be rolled and fitted onto one of the shelves as shown in Fig. 6. It would have been obvious to one of ordinary skill in the art to provide a bag that can be rolled and fitted onto one of the shelves to enable one to store more contents. Furthermore, it is noted that the term “laundry bag” does not impart any structure over the bag of Raley.

4. Claims 14, and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cozens rejection as set forth in paragraphs 1 and 2, in view of either Milionta et al. (6715594) or Tong (6334519). The Cozens combinations as set forth in paragraphs 1 and 2 meet all claimed limitations except for the side tabs. Milionta teaches that it is known in the art to provide tabs at 38 in Figs. 1, 3B, 3C, 72, 74 in Fig. 2, 5A, 5B. Milionta teaches that these tabs are made specifically for gripping purposes (col. 3, ln. 24-25). Tong similarly teaches the side tabs 21 in Fig. 5. Thus, to provide the side tabs in Smith or Chisholm would have been obvious to enable to grip the pocket easily when install/uninstall the inserts from the case and/or to enable one provide an alternative means for attaching the inserts to the case.

(10) Response to Argument

Applicant's arguments have been fully considered but they are not persuasive. Applicant points out that no where Cozens teaches the “one or more removable shelves with lower tracks”

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and that “a drawer configured to slide in and out of the tracks”. The examiner submits that applicant is making arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references.

Tisbo et al. show a shelf with track to accommodate drawers 206,

Tray 192 includes a plurality of elongated containers 206 which have support lips 208 formed on opposed sides for mounting on ledges 202, **thus tray 192 may carry several containers 206, for holding a variety of items.** (col. 5, ln. 4-8)

The examiner submits that it would have been obvious to one of ordinary skill in the art to provide the shelf (tray 192) with the tracks in provided with drawers to store additional contents. The examiner submits that there are plenty of spaces in the device of Cozens and one of ordinary skill in the art would look for other type of shelves and such a shelf with storage drawers in Tisbo would address the need for holding additional contents and to segregate the contents easily.

In an alternative, the examiner submits that it would have been obvious to one of ordinary skill in the art to provide the tracks 204 and drawers 206 in the bottom of the shelf of Cozens to provide an alternative means in replacement of the safety pins and strap to store different types of contents. The examiner submit that in this art of luggage, one of ordinary skill in the art may not necessary choose to transport garments. Thus, to provide the drawers in the bottom of shell “a” would have been obvious so that one can choose to transport different contents of smaller sizes.

Furthermore, the examiner relies on the principal of law as set forth in KSR Int'l Co. V. Teleflex Inc., the examiner submits that the Supreme Court caution the granting of patents based on the combination of elements found in the prior art. The Supreme Court wrote that:

When a work is available in one field of endeavor, design incentives and other market forces can prompt variations of it, either in the same field or a different one. If a person of ordinary skill can implement a predictable variation, § 103 likely bars its patentability. For the same reason, if a technique has been used to improve one device, and a person of ordinary skill in the art would recognize that it would improve similar devices in the same way, using the technique is obvious unless its actual application is beyond his or her skill.

In this case, to provide the provide tracks below a shell is not a novel idea as taught by Tisbo. Similarly, to provide shelve in a luggage is also taught by the primary prior art, Cozens. Thus, to provide the track with drawers on the bottom surface of Cozens, as taught by Tisbo, would implement a predictable variation combination. The technique to provide tracks for drawers in one device, in this case Tisbo, would improve the device of Cozens in the same way to providing holding devices for a variety of items that one may desire to bring on a trip.

Regarding claims 15 and 16, the examiner submits that Pineda teaches a retracting handle (70, 72, 74; abstract; col. 5, ln. 26) and wheels 62. Thus, to provide the retracting handle and wheels as taught by Pineda would have been obvious so that one can transport the device easily.

Applicant asserts that the examiner ignores limitations in claim 15 and 16, and the examiner disagrees. The examiner refers the rejection back to rejection of Cozens (485612) in view of either of Chisholm (6000509) or Smith (5803470), and further in view of Tisbo et al. (4531645). Applicant asserts that there is no integrated wheels and retractable handle. Pineda clearly teaches a retracting handle (70, 72, 74; abstract; col. 5, ln. 26) and wheels 62. as set forth above, it would have been obvious to one of ordinary skill in the art to provide a retractable

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handle along with wheels in Cozens as taught by Pineda to provide an alternative means for transport the case and to allow one to transport the case easily.

With respect to the insert, claim 16 recites

"including one or more of the following:

a personal wardrobe insert providing a plurality of pouches,
an open box structure with one or more elastic straps or hooks
for hanging, and
a pegboard adapted to carry tools or utensils."

The recitation "one or more" requires the teaching references to show only one of the listed group. In this case, the Cozens teaches the insert provide a plurality of pouches k, l, d connectable to the door portion. Similarly, Smith teaches a personal wardrobe insert providing a plurality of pouches 54 in Fig. 6, and Chisholm teaches an insert with a plurality of pouches 72 in Fig. 6. The device in Fig. 6 can also be the open box structure with straps for hanging as shown in Fig. 6.

The examiner submits that the combination Cozens (485612) in view of either of Chisholm (6000509) or Smith (5803470), and further in view of Tisbo et al. (4531645), and further in view of Pineda (4890705) meets all limitations of the claims 15 and 16.

Regarding claims 12, 19, 14, and 17, these rejections are group together with the two base claims 1 and 16. The examiner contends that these rejections should be sustained along with claims 1 and 16.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

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Respectfully submitted,

Tri Mai,

Handwritten signature of Tri Mai in black ink.

Conferees:

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Anthony Stashick, SPEHandwritten signature of Marc Jimenez in black ink.
Marc Jimenez